

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KEVIN NEELEY,

Petitioner,

v.

JEFFREY A UTTECHT,

Respondent.

CASE NO. C19-5667RBL

ORDER

THIS MATTER is before the Court on limited remand from the Ninth Circuit [Dkt. # 22]. The Ninth Circuit's Order asks the District Court to determine whether to grant or deny Petitioner Neeley a Certificate of Appealability under 28 U.S.C. § 2253(c).

The Magistrate Judge's Report and Recommendation [Dkt. # 9] explained at pages 8 – 9 that Neeley had “not made a substantial showing of the denial of a constitutional right,” and recommended that the District Court DENY a Certificate of Appealability.

This Court's Order adopting that Report and Recommendation [Dkt. # 11] declined to issue a Certificate of Appealability, for the reasons articulated in the Magistrate Judge's Report and Recommendation:

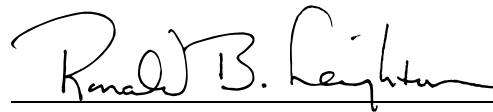
1 (4) The Court will **NOT** issue a certificate of appealability under 28 U.S.C. §2253 for  
2 the reasons articulated in the Report and Recommendation;

3 [Dkt. # 11 at 2]. The purpose of the limited remand is thus unclear to this Court. It has already  
4 denied Neeley a Certificate of Appealability.

5 For the reasons stated in the Report and Recommendation and this Court's Order  
6 adopting it, the Court reiterates that Neeley has failed to exhaust his state court remedies and has  
7 failed to make a substantial showing of the denial of a constitutional right. In this Court's view,  
8 reasonable jurists could not conclude that un-exhausted claims deserve encouragement to  
9 proceed further. *See Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Court therefore  
10 **DECLINES** to issue a Certificate of Appealability.

11 **IT IS SO ORDERED.**

12 Dated this 29<sup>th</sup> day of January, 2020.

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14 Ronald B. Leighton  
15 United States District Judge  
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